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EXCHANGE OF SCHOOL LANDS

Report from the Committee on the Public Lands, April 17, 1912.

Class

Book

62D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 566.

EXCHANGE OF SCHOOL LANDS.

APRIL 17, 1912.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. RAKER, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany H. R. 19344.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 19344) to authorize the Secretary of the Interior to exchange lands for the school sections within an Indian, military, national forest, or other reservation, and for other purposes, having had the same under consideration, report it back with the following amendments:

Page 2, in line 2, strike out the word "made" and substitute therefor the word "approved."

Page 2, lines 3 and 4, strike out the words "upon approval of such exchange" and also the comma after the word "exchange."

Page 2, add after line 4 the following: "*Provided*, That upon completion of the exchange the lands relinquished, reconveyed, or assigned as base lands which fall within the exterior boundaries of a national forest shall immediately become a part of the national forest within which they are situated," and change the period to a semicolon after the word "State," at the end of line 4 on page 2.

This legislation is recommended by the Department of the Interior, the Department of Agriculture, and the Department of Justice. Also the authorities of the State of California, and also by the legislation of the State of California, which is for the purpose of carrying out an adjustment and settlement had between the Land Department and the authorities of the State of California, confirmed by the legislation of that State. This legislation appears to be necessary and is urged by the Department of the Interior as well as the authorities of the State of California, as will appear from the hearings had before the committee. The committee has had full hearings upon this matter, which have been printed.

The report of the Department of the Interior, the Department of Justice, and the Department of Agriculture, and a copy of the act of

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legislation of the State of California and the report of the attorney general and the surveyor general of the State of California follow:

[H. R. 19344, Sixty-second Congress, second session.]

IN THE HOUSE OF REPRESENTATIVES.

February 2, 1912.

Mr. Raker introduced the following bill; which was referred to the Committee on the Public Lands and ordered to be printed.

A BILL To authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to make exchange of lands with the several States for those portions of the lands granted in aid of common schools, whether surveyed or unsurveyed, which lie within the exterior limits of any Indian, military, national forest, or other reservation, the said exchange to be made in the manner and form and subject to the limitations and conditions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, as amended by act of February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes, page seven hundred and ninety-six), and any such exchange whether heretofore or hereafter made shall restore full title in the United States to the base land, upon approval of such exchange, without formal conveyance thereof by the State.

By request, the chairman of the Public Lands Committee submitted the matter to the Department of the Interior, and on February 19, 1912, Mr. Samuel Adams, Acting Secretary of the Department of the Interior, made the following report:

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1912.

HON. JOSEPH T. ROBINSON,
Chairman Committee on the Public Lands, House of Representatives.

SIR: In response to your request for a report on House bill 19344, entitled "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," I have the honor to submit the following:

It is understood that the bill was introduced at the instance of the officials of the State land department of the State of California for the purpose of and with a view to aiding the State in the adjustment of the grant to the State for common-school purposes, which has been in a very unsatisfactory condition and practically a state of suspension for several years. The provisions of the bill are largely declaratory of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the United States Revised Statutes, as construed and administered by the department for a number of years, but as framed expressly authorizes exchanges of lands which are within the exterior limits of any Indian, military, national forest, or other reservation. It is also provided that any such exchange, whether heretofore or hereafter made, shall restore full title to the United States to the base land, upon approval of such exchange, without formal conveyance thereof by the State.

School sections in national forests are now held to be subject to exchange under the provisions of the act of 1891, supra, as lands being otherwise reserved, whereas the bill expressly authorizes the exchange of such lands, whether surveyed or unsurveyed, and vests title in the United States to such sections which have heretofore been used as base for selections made and approved to the various States.

Under the act of 1891 as now administered the exchanges made thereunder are not complete and title to the tracts of land exchanged does not vest in the State until the approval thereof by the Secretary of the Interior and the subsequent certification of the selections to the State by the General Land Office. The title vests in the contracting parties upon the date of the certification and not on the date of the approval of the selections.

As to the clause in the bill providing that no formal conveyance of the base tracts by the State to the United States be necessary to vest title, it may be stated that no such conveyances have been required by the department for a number of years. In

an opinion of the Assistant Attorney General of the department, dated January 26, 1901 (30 L. D., 438), the deed of reconveyance was held not to be necessary, for the reason that the selection of indemnity of itself amounted to a waiver of the State's claim, or, in other words, operated to transfer the legal title of the State to the United States.

In that opinion the right of the State to indemnity for school lands in forest reserves is dependent solely on the proposition that the selection of indemnity constituted a waiver of the State's claim and that Congress has full authority to declare what effect shall be given to such a selection, and no distinction could be based upon the fact that the title to the base lands had or had not vested in the State prior to the selection.

There may have been some doubt heretofore as to the meaning of that clause of section 2275, Revised Statutes, under which exchanges of school lands between the several States and the United States are now effected. If any such doubt has existed, it will be conclusively removed should this bill be enacted into law, and for this reason I recommend that the bill be passed.

Very respectfully,

SAMUEL ADAMS, *Acting Secretary.*

This matter was reported to the Attorney General, of the Department of Justice, and on February 7, 1912, he made a report thereon as follows:

DEPARTMENT OF JUSTICE,
Washington, February 7, 1912.

Hon. JOSEPH T. ROBINSON,
Chairman Committee on the Public Lands, House of Representatives.

SIR: I have received your letter of February 3, 1912, inclosing for such suggestions and recommendations as may be deemed necessary a copy of H. R. 19344, Sixty-second Congress, second session, authorizing the Secretary of the Interior to exchange lands for school sections within Indian, military, and other reservations.

This bill authorizes the Secretary of the Interior to make exchanges of lands with the several States for those portions of school sections, whether surveyed or unsurveyed, lying within the exterior limits of any reservation, the exchange to be made in the manner and form and subject to the limitations of sections 2275 and 2276 of the Revised Statutes, as amended by the act of February 28, 1891 (26 Stat., 796), and provides that any such exchange, whether heretofore or hereafter made, shall restore to the United States full title to the base land without any formal conveyance by the State.

I have the honor to advise you that authority to make exchanges of school sections included within the exterior boundaries of reservations, prior to the survey of such school sections, already exists under the act of February 28, 1891, supra. The Department of the Interior also holds that authority likewise exists under the said act of 1891 to make exchanges of school sections included within the exterior limits of reservations even after the survey of such school sections (see 34 Land Decisions, 599, and cases cited), and I understand that many thousands of acres of such lands have been exchanged. However, it has been held by at least one Federal court that the act of 1891 does not authorize a State to exchange school lands which had been surveyed prior to the creation of the reservation within the exterior limits of which the school section is embraced. (Hibbard *v.* Slack, 84 Fed., 579.) It would seem, therefore, that the enactment of some such legislation as that proposed in this bill will serve a useful purpose.

Respectfully,

ERNEST KNAEBEL
(For the Attorney General),
Assistant Attorney General.

DEPARTMENT OF THE INTERIOR,
Washington, April 17, 1912.

Hon. JOHN E. RAKER,
House of Representatives.

SIR: At your instance I have carefully considered the committee's proposed amendment to H. R. 19344, being a bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, which amendment proposes to change that portion of the bill which now reads "and any such exchange, whether heretofore or hereafter made, shall restore full title to the United States to the base land upon approval of such exchange without formal conveyance thereof to the United States," so as to read, "and any such exchange, whether heretofore or hereafter approved, shall restore full

title in the United States to the base land without formal conveyance thereof by the State."

Now, in my opinion, the language employed in both instances means the same thing, but I rather incline to the committee's amendment because it is more direct and perhaps freer from doubt. Of course, no exchange is made until it is approved, and therefore to have the bill provide that "any such exchange, whether heretofore or hereafter approved," is technically more correct, and when so changed renders the latter expression "upon approval of such exchange" unnecessary.

In this connection I have noted the objections to the proposed change made by the attorney general and surveyor general of the State of California. They seem to fear that any change in the bill as originally drawn may result in advantage to those seeking to force the State to make sale to them of base lands used in selections already made. I am free to say that I can not see how this amendment can have that effect.

"The power of the Secretary to approve selections is judicial in its nature, and implies the duty to determine as of the time of filing the selection, and the doctrine of relation applies to decisions as to validity of such selections." (Syllabus, Weyerhaeuser *v.* Hoyt, 219 U. S., 380.)

The selections by the State have always been accorded segregative effect from the time of their filing and under the decision referred to, if approved, would have relation as of the time of filing.

I do not see how more effective legislation could or should, be extended in behalf of the State of California than as hereinbefore indicated, with respect to its selections heretofore or hereafter made, and in conclusion must say that the committee's proposed amendment seems to be entirely satisfactory to the Government and is not shown to be, nor do I believe it will be, prejudicial to the interests of the State in the premises.

Very respectfully,

F. W. CLEMENTS,
First Assistant Attorney.

The following is a letter from the Department of Agriculture:

UNITED STATES DEPARTMENT OF AGRICULTURE,
Washington, D. C., April 16, 1912.

Hon. JOS. T. ROBINSON,
Chairman Committee on Public Lands, House of Representatives.

DEAR MR. ROBINSON: I am in receipt of your letter of April 10 inclosing a copy of the bill (H. R. 19344) introduced by Mr. Raker to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes.

By letter of February 15, 1912, to you, I reported upon this bill and submitted the recommendations of this department. Since my first letter has evidently not reached its intended destination, I inclose a copy of it for your information.

Very sincerely, yours,

JAMES WILSON, *Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
Washington, D. C., February 15, 1912.

Hon. JOSEPH T. ROBINSON,
Chairman Committee on Public Lands, House of Representatives.

DEAR MR. ROBINSON: Your letter of February 3 inclosing a copy of the bill (H. R. 19344) to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, is received.

The bill has been carefully considered in this department and it seems that it will not change the existing law with respect to State indemnity selections other than it is at the present time interpreted by the Secretary of the Interior, who has jurisdiction to construe such matters. Its purport seems to be more in the nature of having Congress confirm what is being done under existing law. I would suggest, however, that the following amendment be added at the end of the bill, to clearly define the status of the reconveyed or relinquished lands of the State which fall within the boundaries of national forests:

"*Provided*, That upon completion of the exchange, the lands relinquished, reconveyed, or assigned as base lands which fall within the exterior boundaries of national forests shall immediately become a part of the national forest within which they are situated."

Very sincerely, yours,

JAMES WILSON, *Secretary.*

A letter dated February —, 1912, by Mr. A. W. Sanborn, deputy surveyor general, upon this same subject. It is as follows:

WASHINGTON, D. C., *February —, 1912.*

Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR SIR: In connection with the draft of bill left with you yesterday, entitled "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," I wish to state that the measure is proposed at the earnest solicitation of the surveyor general and the attorney general of the State of California, and was drafted after consultation with officials of the Interior Department.

Gen. Webb, Gen. Kingsbury, and myself are of the opinion that such legislation is desirable and important, in aid of the adjustment of the school grant concerning which a controversy has long existed.

As you well know, nothing so retards the development of a State as uncertainty and litigation over land titles, and conditions in California in this respect have certainly been very distressing because of the long delay in the issuance of titles, or evidence of title, by the General Government.

I am of the opinion that the measure proposed, if enacted, will expedite the adjustment of the difficulty now existing, and I solicit your earnest endeavor in its enactment.

I inclose herewith, for your information, a copy of the basis of adjustment of the California school grant, agreed upon by officials of the Department of the Interior and the State authorities; also a copy of the recent act of the legislature, accepting the same and providing for carrying it into effect.

Very respectfully, A. W. SANBORN.

Some time in July or August, 1911, the attorney general of the State of California and the surveyor general of California appeared at Washington and had a conference with the United States Attorney General and also the Secretary of the Interior and the Commissioner of the General Land Office in regard to the lands in the State of California which are tied up and creating a great deal of trouble between those that claimed them—the State and others—and amounting to somewhere from 400,000 to 450,000 acres of land.

This is the basis of adjustment. It reads as follows:

BASIS OF ADJUSTMENT.

(1) That there be paid to the United States, as under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), $1.25 per acre in satisfaction of all excess certifications of indemnity school lands which occurred prior to the date of approval of said act, and for which said lands no payment has as yet been made to the United States.

(2) That new and valid bases be designated by the State for all selections that have been or may be approved, made on the basis of lands in sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been, or may be, sold or encumbered by the State; provided, however, that new base need not be designated in any case wherein the United States has disposed of, by patent, the tract in lieu of which indemnity was claimed and granted.

(3) That new and valid bases be designated by the State for approved selections in all cases wherein there have been, or may be, excesses in certifications occurring since March 1, 1877.

(4) That lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), are the property of the United States, and which have been sold or encumbered by the State, are to be selected by the State, it being understood that the requirements of publication of notice and the filing of nonmineral affidavits in support of such selections be waived by the Land Department of the United States.

(5) That the State of California will enact such additional laws as may be necessary to carry into effect the plan of adjustment herein contained, and the Land Department of the Federal Government will favor and will use its good offices to have passed

and approved such legislation by Congress as may be necessary to consummate such plan.

(6) That the Land Department will immediately proceed with the listing of all selections made by the State where the base is free from objection and the lands applied for are subject to selection by the State; provided the governor of the State of California shall first agree to specify and state in a call or proclamation for a special or extraordinary session of the State legislature, to be made and held some time during the year 1911, as one of the purposes for which the legislature is so convened, the subject and consideration of such legislation as may be required to consummate the within plan of settlement; and provided further, that if such necessary laws be not enacted at such special session the plan of adjustment herein contained may be deemed without force and effect.

Under and in pursuance of this agreement the governor of the State of California included in a call for an extraordinary session of the Legislature of California the provisions contained in this agreement, and thereunder, and on the 24th day of December, 1911, the Legislature of the State of California passed the following act:

CHAPTER 21.—An act to authorize the adjustment and settlement of a controversy existing between the United States and the State of California, in relation to the grants made by Congress to the State of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the State for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof.

[Approved December 24, 1911.]

Whereas under the terms and provisions of certain acts of Congress of the United States 500,000 acres of land were granted to the State for internal improvement and the sixteenth and thirty-sixth sections in each township, and lands in lieu thereof, were granted to the State of California for school purposes; and

Whereas it is claimed by the United States that prior to March 1, 1877, there were listed to the State of California approximately 16,000 acres of land, in excess of the amount of land to which the State was justly entitled, also that the State has received indemnity for certain sixteenth and thirty-sixth sections of land assumed to be within the exterior boundaries of Mexican grants, which sixteenth and thirty-sixth sections were subsequently either wholly or partially excluded from such grants and subsequently sold by the State, the total area being approximately 10,151 acres; also that the State has received indemnity for certain sixteenth and thirty-sixth sections, alleged to be mineral in character, which said school sections the State sold in place, either before or after receiving indemnity therefor, the total area being approximately 8,715 acres; also that the State received approximately 2,028 acres in excess of the 500,000-acre grant; and

Whereas the Department of the Interior has for many years withheld from certification the greater part of the lieu land selected by the State, pending a settlement of said matters, and there remains to be listed to the State upward of 450,000 acres, which, if listed, would be subject to taxation: Now, therefore,

The people of the State of California do enact as follows:

SECTION 1. There shall be paid to the Federal Government by the State of California, acting through the officers hereinafter mentioned and in the manner and upon the terms and conditions hereinafter set forth, the sum of one and twenty-five one-hundredths dollars per acre for all excess certifications of indemnity school lands, which occurred prior to March 1, 1877, and for which said lands no payment has as yet been made to the United States.

SEC. 2. The officers of the State of California mentioned in sections 3519 and 3520 of the Political Code of said State are hereby authorized, empowered, and directed, in the manner in said sections provided, to convey to the United States by patent or otherwise such an amount of land in sections 16 and 36, situated in national forests or other reservations, as will equal in area all selections that have been heretofore listed or certified by the Government to the State of California, made in lieu of sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been or may be sold or encumbered by the State: *Provided, however,* That no lands shall be patented in any case wherein it shall be found that the United States has disposed, by patent or otherwise, of the tract in lieu of which indemnity was claimed and granted.

SEC. 3. The officers of the State referred to in section 2 hereof are hereby authorized and directed to convey, by patent or otherwise, to the United States, in addition

to the 12,000 acres heretofore granted, an amount of land equal in area to any additional excess in certifications occurring since March, 1877.

The surveyor general of the State of California is hereby authorized and empowered to locate and select in the United States Land Offices, for the benefit of persons having certificates of purchase or patents from the State, lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877, and commonly known as the Booth Act, are claimed to be property of the United States, but which said lands have been heretofore sold or encumbered by the State. The said lands hereby authorized to be selected are lands which have been heretofore used or designated by the State of California as basis for indemnity selections, and for which the State of California received indemnity, but which said lands in said sections 16 and 36 the said State also sold or encumbered. For the purpose of making the selections hereby authorized to be made, the said surveyor general is hereby authorized and empowered to use and designate any basis or lands mentioned in section 3406*a* of the Political Code of the State of California, or any other basis, which may be proper or valid in making indemnity selections.

SEC. 4. For the purpose of carrying into effect the terms and provisions of this act, the surveyor general of the State of California is authorized and directed to ascertain and determine from the records of his office and the records of the Department of the Interior the amount of lands which should be conveyed to the United States and likewise the number of acres of land as in this act provided for, which the State has, by the terms of this act, authorized and directed payment to be made, and after said facts have been ascertained and determined, the said officers of said State, referred to in sections 2 and 3 hereof, are hereby authorized and directed to make, execute, and deliver for said State, in its name and as its act and deed, any and all written agreements, deeds, patents, or conveyances necessary to carry out and consummate the terms of this act.

SEC. 5. The sum of $25,000 is hereby appropriated, out of any moneys in the State treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act and paying all necessary expenses of the surveyor general and attorney general in connection herewith, and the State controller is hereby authorized and directed to draw his warrant or warrants in favor of the United States, or the proper officers thereof, for such amount as may be payable to said United States under the terms hereof, and also to draw his warrant or warrants for the necessary expenses of the surveyor general and the attorney general in carrying out the provisions of this act, and the State treasurer is hereby directed to pay the same.

This is the agreement between the Department of the Interior and the authorities of the State of California—as between those two and not as affecting the rights, whatever they might be, between the State and private individuals. This land has been held, most of it, for years. Great values have been placed upon it by improvements and it has been assessed for many years. The Supreme Court of the State of California has lately held that the land was nonassessable, and therefore parties have been collecting back taxes from the counties; in other words, it is nontaxable in the State of California, and the conditions are such that there can be no adjustment between the State and private individuals and the Government; hence the general legislation.

A letter of the attorney general of the State of California dated March 11, 1912, covering this subject, gives the full history and the purpose of the proposed bill. It is as follows:

STATE OF CALIFORNIA, OFFICE OF ATTORNEY GENERAL,
Sacramento, March 11, 1912.

Hon. JOHN E. RAKER,
Representative in Congress, Washington, D. C.

DEAR SIR: Your favor of February 16, 1912, inclosing copy of H. R. 19344, together with copy of a telegram received by you from Mr. Fred W. Lake in regard thereto, duly received. In reply to your inquiry as to the general situation, I beg to say:

By the act of Congress of 1853 there was granted to the State of California the sixteenth and thirty-sixth sections of land in each township. If, before survey, those sections became subject to preemption or homestead claims, or were mineral in

character, or where deficiencies existed on account of fractional townships, the State then became entitled to indemnity for such loss, and might select other lands of equal acreage in lieu thereof. While the grant of these sections was one in præsenti, yet, as the title thereto did not pass until survey, the appropriation of the same by the Government, or by one claiming through it, before such survey, lost to the State such section or sections so subject to such prior appropriation, and hence the State would be, in such instances, entitled to select other lands in lieu thereof; but as the title of the State does vest immediately upon survey, a reservation established by the Government subsequently to survey, the exterior boundaries of which would include such sixteenth and thirty-sixth sections, would occasion no loss to the State, the title having already vested in the State and not being divested thereby. Hence the State, notwithstanding the fact that these sections might be within the exterior limits of national reservations created subsequent to survey, had full title and could sell or otherwise dispose of the same. (See Hibbard *v.* Slack, 84 Fed., 571, decided in 1897.)

In the Hibbard case it was contended that, by virtue of the act of Congress of February 28, 1891, amending sections 2275 and 2276 of the Revised Statutes of the United States, the State of California was entitled to select other lands in lieu of sixteenth and thirty-sixth sections of school lands, situated within the exterior boundaries of a public reservation, where said sections were surveyed and became the property of the State prior to the date when the reservation was created, but the court held, as above stated, that such was not the fact.

In 1901, however, Assistant Attorney General Van Devanter rendered an opinion, which was adopted by the Secretary of the Interior, to the effect that the State of California could so select other lands in lieu of such surveyed sections, and the department has, apparently, continued to hold to this view.

After the amendment in 1891 of sections 2275 and 2276 of the Revised Statutes of the United States, above referred to, a great many selections were made by the State based upon surveyed school sections situated within the exterior limits of national forests or national reservations, which are still pending before the General Land Office at Washington for approval or rejection. So far as the General Land Office is concerned, it will in all probability recognize as valid bases surveyed school sections and certify other lands in lieu thereof.

The State continued to make selections, using as bases therefor surveyed school sections situated in national reservations up to some time after the present surveyor general of California, Hon. W. S. Kingsbury, took office in 1907. In an endeavor on his part to administer the duties of his office in a careful manner, he discovered that some question did exist as to the validity of selections so made, and referred the question to me. As a result of my advice to him he discontinued making selections upon surveyed school sections until after the passage of the "Thompson Act," hereafter referred to.

The laws of California were such that after a selection was made, if the land selected (not the bases for the selection) was open to selection or entry, the register and receiver of the local land office thereupon notified the State land office of the acceptance of such selection, and thereupon a certificate of purchase was issued by the State for the selected land, although the title still remained in the United States and could not pass to the State until final action by the commissioner at Washington. The condition, therefore, that the present surveyor general was confronted with at the time he assumed office was this: Several hundred selections had been made in which the State had designated surveyed bases, concerning the validity of which some question might be raised.

The State had issued to most of these State applicants certificates of purchase which also under the law were assignable, and many had been assigned. The surveyor general and myself, after careful consideration of the matter, believed that, under the circumstances, legislation should be provided, to the end that if the surveyed sections used as bases were not available as such when used they should be made so, in order that holders of these certificates of purchase might secure the land described therein. For this purpose the legislature of California, in 1909, provided that surveyed school sections should be valid bases, and upon the listing of the selected lands to the State the title to such surveyed school sections should immediately vest in the United States. These provisions of the law of California so passed in 1909 were sufficient, so far as the State was concerned, to pass the title to these surveyed school sections to the Federal Government upon the listing of lands in lieu thereof, but if the provisions of sections 2275 and 2276 of the Revised Statutes of the United States were insufficient to authorize the General Land Office to accept selections made upon surveyed school sections, then the law of California would be of no avail; hence, although the department, as above stated, seems to be willing to accept such selections, we deem it important to

have an act passed by Congress to the same effect. The act introduced by yourself is intended to accomplish this purpose.

Shortly after Mr. Kingsbury took office as surveyor general of California, in January of 1907, he also discovered that indemnity or lieu lands were almost entirely controlled by F. A. Hyde. Hyde was enabled to control these lands by reason of the fact that until a section of school lands was placed within the limits of a reservation created by proclamation of the President, no lands could be selected in lieu thereof, nor could any applicant file an application for lieu lands in the State land office. For years Mr. Hyde was enabled to secure the first information as to the creation of national reservations, which thereby enabled him, under the laws of California, to file applications before any other person had the necessary information. To correct this condition and to permit the State to secure the benefit of controlling these lieu-lands selections, Senator Thompson, the surveyor general, and myself drafted a bill which is known as the "Thompson bill," and which was passed by the legislature in 1909, which was the first session of the legislature after Gen. Kingsbury took office. This bill withdrew all such sixteenth and thirty-sixth sections from sale or use by any person and provided a method of sale at public auction. The plan has worked very well and has enriched the State to the extent of several hundred thousands of dollars; the last sales bringing close to $10 per acre instead of $1.25, as they had previous to that time. It also had the effect of stopping the activities of F. A. Hyde and those operating with him.

At these sales no land is sold directly, but the basis is sold and a certificate of indemnity or scrip issued, which is used as the basis for a selection from vacant Government land.

In the latter part of 1908 we began work on proposed legislation which we deemed necessary to correct the conditions arising by reason of the facts referred to above which resulted in the passage of the so-called "Thompson Act." This act you will find incorporated in the Political Code (secs. 3398 to 3408e). The main objects desired to be attained by such legislation were to enable the State to control the bases for indemnity selections, and likewise to make surveyed sections situated within national reservations available as bases for lieu selections. By making such surveyed sections available as bases, not only would the doubt as to the regularity of selections theretofore so made be removed, but, likewise, it would bring to the State a large increase in price theretofore received for lands, as these sections in place were, to a large extent, quite valueless, whereas if used as bases for lieu selections they would bring as demonstrated by the operations under the Thompson Act, from $6 to $10 per acre.

Mr. Lake, representing some 300 or more applicants, commenced the attempted filing of applications on these surveyed school sections in place in the latter part of 1908 and continued to present applications until the Thompson Act went into effect. He apparently attempted to cover every school section situated within the limits of national reservations, and particularly did he attempt to cover all such sections which had been used as bases for indemnity selections. If he is successful, the greater portion of all such selections made for the past 15 or 20 years will be rejected by the General Land Office at Washington, although the State has already issued, and there have been outstanding for years in a great many instances, certificates of purchase for most of these selected lands. The surveyor general refused to file or to recognize the applications so presented by Mr. Lake for these school sections which had been used as bases for lieu-land selections, and Lake has now commenced in the courts of California, in the names of these applicants, proceedings to enforce the filing of the same. Just as soon as the legislature met in 1909 we attempted to correct the condition of things by withdrawing such school sections so situated within national reservations and providing that they should be used only as bases for indemnity selections, and also by providing that where already so used as bases, such bases should be good and valid; but Lake's contention is that in view of the fact that the applications of the persons represented by him were presented prior to the withdrawal of such lands from sale in place, they acquired a vested right which the subsequent legislation could not destroy. I am strongly of the opinion that this contention will not be upheld by the courts, as it has been held many times that a person gains no vested rights by the mere presentation or filing of an application, and notwithstanding such fact the legislature still has the right to withdraw the lands from sale, or to otherwise dispose of them. Mr. Lake objected very strenuously before the legislative committees to the passage of the acts withdrawing these lands from sale, but the Legislature of California, with full knowledge of all the facts, withdrew the same and upheld the position we have taken in every respect.

Of course the many applicants represented by Mr. Lake did not know the conditions prevailing, and in most if not all instances had never seen the lands applied for; but Lake, knowing that some question existed as to the validity of the selections made upon surveyed bases, saw a chance of either securing these school sections in

place or so clouding the title thereto as to cause the Land Department of the Government to reject selections based thereon. Of course, among the selected lands will be found many thousands of acres extremely valuable, and it is easy to see that if the applicants for these selected lands, or their assignees, find that their selections are to be rejected by reason of Mr. Lake's activities in attempting to secure the base, they would be willing to pay a large amount per acre to settle with him.

Under all the circumstances, I sincerely believe that there is no other course open but for the State to use every fair and honorable means to make these surveyed sections available as bases for lieu selections. To a certain extent the predecessors in office of Gen. Kingsbury were justified in using surveyed school sections as bases, in view of the opinion of Assistant Attorney General Van Devanter, above referred to, and also in view of the attitude of the department recognizing the right of the State to do so. At all events it would seem to me that the equalities are all on the side of the State lieu-land applicants, and that the persons represented by Mr. Lake have no just complaint because they acted through him entirely, and he knew the exact situation when he attempted to make his filings, and did so knowing that if he was eventually successful, the selections made for the lieu-land claimants must be rejected by the department.

I trust that you will pardon the length of this letter, but the matter is of such importance that I deemed it advisable to acquaint you with the facts.

Your wire of 10th instant states, "Public Lands Committee will hear House bill No. 19344, in reference to lieu lands, on March 20," duly received, and I take it that the information contained in this communication answers any questions you desire answered in said telegram.

I desire to thank you for your interest in this matter, and assure you that your efforts are thoroughly appreciated.

Yours, very truly,

U. S. WEBB, *Attorney General*,
By E. B. ROWEN, *Assistant*.

A letter to the Department of the Interior on March 29, 1912, and their reply under date of April 2, 1912, as follows:

MARCH 29, 1912.

Hon. WALTER L. FISHER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: On February 2, 1912, I introduced a bill (H. R. 19344) to adjust the land differences between the United States and the State of California. This bill has been referred to the Secretary of the Interior and a favorable report made thereon.

The matter has been before the committee and will be considered Tuesday, April 2, 1912, at 10 o'clock a. m., by the Committee on the Public Lands. There have been two amendments suggested to the bill by various parties—one by Mr. Lake, of Oakland, and the other by Mr. Bolton, of San Francisco.

I therefore telegraphed to W. S. Kingsbury, State surveyor general, on March 25 in relation to the Lake amendment, as follows:

WASHINGTON, D. C., *March 25, 1912.*

Hon. W. S. KINGSBURY,
State Surveyor General, Sacramento, Cal.:

Lake submits to committee proposed amendment to House bill 19344, as follows:

"*Provided, however*, That nothing in this act and no exchange made or ratified under the provisions of this act shall impair the rights or claims of any persons to any land ceded, conveyed, or waived to the United States as a basis for such exchanges where such rights or claims are held adversely to such cession, conveyance, or waiver."

Wire me immediately your position upon this amendment proposed by Lake.

and on March 26 received his telegraphic answer, as follows:

SACRAMENTO, CAL., *March 26, 1912.*

Hon. JOHN E. RAKER,
Member of Congress, Washington, D. C.:

Am unalterably opposed to Lake's proposed amendment. The applications for surveyed school section which the State has used as base were presented by Lake with the full knowledge on the part of Lake that the State had used the land as base for years before. He presented the applications. The State immediately rejected the application, and, in my opinion, Lake has no equitable claim; and the legislature later repudiates Lake's claim and has done all it could to cancel the applications. See Statutes of California, 1911, page 1408. Lake's proposed amendment would de-

feat the title of purchasers of 200,000 acres of lieu land sold to them in good faith by the State, by taking the base from under the selected land. Lake is relying solely on the technical point that the State had no right to use surveyed base. Do not think that the Federal Government should hesitate about rejecting Lake's amendment, in view of attitude of State.

W. S. KINGSBURY,
State Surveyor General.

On the same day I telegraphed to Mr. Kingsbury in regard to the Bolton amendment, which telegram was as follows:

WASHINGTON, D. C., *March 25, 1912.*

Hon. W. S. KINGSBURY,
State Surveyor General, Sacramento, Cal.:

Bolton desires to have an amendment to House bill No. 19344, as follows: "*Provided*, That the Secretary of the Interior shall not approve any exchange of lands if the land selected by the State be, at the time of approval, within the exterior limits of any land withdrawn under the provisions of an act entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910."

Wire me your position and what you have to say about the proposed amendment.

JOHN E. RAKER, M. C.

and on March 26 received his reply, which is as follows:

SACRAMENTO, CAL., *March 26, 1912.*

Hon. JOHN E. RAKER,
Member of Congress, Washington, D. C.:

The State is opposed to the amendment submitted by Bolton. By consenting to the proposed amendment the State would be waiving the rights of State applicants, if such rights vested by virtue of the selection made by the State. The State can not consent to this. Whatever rights the State applicant acquired by virtue of the selection made by the State should be saved to the applicant. In other words, no provision should be inserted which would in any way attempt to take from the State applicants rights which they acquired by virtue of the selection made by the State for them.

W. S. KINGSBURY,
State Surveyor General.

On March 25, 1912, I telegraphed the proposed amendment to Attorney General Webb, which telegram was as follows:

WASHINGTON, D. C., *March 25, 1912.*

Hon. U. S. WEBB,
Attorney General, Humboldt Bank Building, San Francisco, Cal.:

Lake submits to committee proposed amendment to House bill 19344, as follows: "*Provided, however*, That nothing in this act and no exchange made or ratified under the provisions of this act shall impair the rights or claims of any person to any lands ceded, conveyed, or waived to the United States as the basis for such exchanges where such right or claims are held adversely to such cession, conveyance, or waiver."

Wire me immediately your position upon this proposed amendment by Lake and whether or not, if adopted, it would not defeat the proposed legislation.

JOHN E. RAKER, M. C.

and on March 26, 1912, received his reply, as follows:

SACRAMENTO, CAL., *March 26, 1912.*

JOHN E. RAKER,
Member of Congress, Washington, D. C.:

The proposed amendment by Lake would undoubtedly injure some two or three hundred State applicants, involving several hundred thousand acres of land. The State of California, by its legislature, has considered matters of claims of these various applicants and has decided matter in favor of State lieu-land claimants. There is no question but that the equities are all in favor of lieu-land claimants. Lake's proposed amendment is for the purpose of aiding him in clouding the base lands on which these State lieu-land selections stand, and, if he is successful in litigation in court, to defeat these lieu-land claimants altogether by taking the bases from under their selections or to force them to settle with him. I am opposed to amendment. If he has any vested rights, as he claims he has, then bill introduced by you in Congress can not injure him. My previous letter to you explains situation more in detail. Telegram on Bolton amendment to-morrow.

U. S. WEBB,
Attorney General, California.

On March 26, 1912, I telegraphed Bolton's amendment to Attorney General Webb, which telegram is as follows:

WASHINGTON, D. C., *March 25, 1912.*

Hon. U. S. WEBB,
Attorney General, Humboldt Bank Building, San Francisco, Cal.:

Bolton desires to have an amendment to House bill No. 19344, as follows: "*Provided*, That the Secretary of the Interior shall not approve any exchange of lands if the land selected by the State be, at the time of approval, within the exterior limits of any land withdrawn under the provisions of an act entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910."

Wire me your position and what you have to say about the proposed amendment.

JOHN E. RAKER, M. C.

And on March 28 received his answer thereto, which is as follows:

SACRAMENTO, CAL., *March 28, 1912.*

Hon. JOHN E. RAKER,
Member of Congress, Washington, D. C.:

State, in my judgment, can not indorse Bolton amendment. Bolton fears that bill introduced by you will injure rights of his clients who are claiming as mineral claimants. The State has selected certain lands for State applicants whose applications are on file in State land office. They claim that as land was subject to selection their rights attach. If this is so, they should not be defeated by Bolton's amendment. Amendment provides that "Secretary of Interior shall not approve any exchange of lands if the land selected by the State be, at the time of approval, within the exterior limits," etc. On face of amendment this would defeat State applicants. Bill introduced by you was prepared by Department of Interior. Any amendment to bill is dangerous, as it may defeat entire object of bill. If permitted, it should be so worded that all rights State applicants require by the selections made for them by the State are carefully guarded and protected, and for such purpose such amendment must be very carefully worded and considered.

U. S. WEBB, *Attorney General.*

Will you kindly make full report on these matters, so that I may have them at least as early as Monday for the use of the committee on Tuesday? I also told the committee I would have some one from the department at that time. I would like to have a representative from the Department of the Interior who is familiar with this subject on the date set for the hearing, as the attorney general advises me that this matter has been given full attention by your department from the officers in California.

I am, yours, most truly,

JOHN E. RAKER, M. C.

DEPARTMENT OF THE INTERIOR,
Washington, April 2, 1912.

Hon. JOHN E. RAKER,
House of Representatives.

DEAR SIR: I have your letter of March 29, 1912, advising that two proposed amendments have been presented to H. R. 19344, "A bill to authorize the Secretary of the Interior to exchange lands for school sections within Indian, military, national forest, or other reservations," the first by Mr. Lake, of Oakland, Cal., the other by Mr. Bolton, of San Francisco, Cal. You quote the proposed amendments and comments thereon addressed to you by the State surveyor general and attorney general of the State of California, and ask for report upon the matters therein involved.

The bill in question, as introduced, is largely declaratory of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the United States Revised Statutes, and in terms authorizes the Secretary of the Interior to make exchanges of lands with the several States for those lands granted in aid of common schools, whether surveyed or unsurveyed, which lie within the exterior limits of any Indian, military, national forest, or other reservation. In the opinion of this department the authority to make such exchanges now exists in said sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891, supra, and the department has uniformly so ruled since January 30, 1899. As stated in decision in the case of the State of California (28 L. D., 57–61), the legislation under which forest reservations were authorized was pending before Congress at the time when the act of February 28, 1891, supra, was under consideration and became a law only a few days later, "Congress knew when these acts were under consideration that such reservations would neces-

sarily embrace in many instances lands which had been granted, reserved, or pledged to States and Territories for the use of public schools. It surely knew also that these reservations would frequently contain surveyed townships or portions thereof within which would be the school sections 16 and 36, which had passed to the States or were reserved or pledged to the Territories, and that these sections, entirely surrounded by Government lands and sometimes far within the boundaries of the reservation, would be of little or no benefit—as alleged to be the fact in the case at bar—to the States or Territories while the reservations exist."

The conclusions was therefore reached that where a forest reservation includes within its exterior limits a school section surveyed prior to the establishment of the reservation the State, under the authority of the first proviso to section 2275 of the Revised Statutes, amended, may be allowed to waive its right under such section and select other lands in lieu thereof. The same question was involved in the cases of Dunn et al. *v.* State of California (30 L. D., 608), the Territory of New Mexico (29 L. D., 364, 399; 34 L. D., 599), and the State of California (34 L. D., 613), and the same conclusion reached.

The language of the statute in question of itself appears conclusive upon the question involved, "and other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections 16 or 36 are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided,* Where any State is entitled to said sections 16 and 36, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right under said sections." (Sec. 2275, amended.)

Therefore the report of this department, dated February 19, 1912, favoring the enactment of H. R. 19344 was made only upon the theory that if any doubt has heretofore existed as to the meaning and effect of the clause of section 2275, Revised Statutes, above quoted, it will be removed by the enactment of the measure and not because of any belief on its part that such exchanges may not be effected under existing law.

The amendment suggested by Mr. Lake is to the effect that nothing in said H. R. 19344, if enacted, "shall impair the rights or claims of any persons to any lands ceded, conveyed, or waived to the United States as a basis for such exchanges where such rights or claims are held adversely to such cession, conveyance, or waiver."

The communication addressed to you by the surveyor general of California recites that Lake has heretofore made applications to purchase surveyed school sections within reservations which had theretofore been used as the basis for indemnity selections by the State, which applications were immediately rejected. It is further stated that Lake had full knowledge of the fact that the State had used such base lands long before his application to purchase same, and that he relies solely upon the technical allegation that the State had no right to surrender school sections surveyed prior to the creation of the reservations as a basis for indemnity. The attorney general of California advises you in the same connection that Lake's proposed amendment is for the purpose of aiding him in clouding the title to the base lands upon which the State lieu selections rest, permitting him, if successful in certain litigation now pending in the courts of California, to defeat the claims of the persons who have purchased lieu-section lands from the State or force them to settle with him.

It appears that the Legislature of the State of California passed an act May 1, 1911 (Laws of California, 1911. p. 1408), providing that all applications theretofore filed with the State for sections 16 or 36 within the limits of reservations and upon which no certificates of purchase had issued shall be canceled by the surveyor general and held to be null and void.

While this department has no official connection with or information concerning the attempted purchases by Mr. Lake of such school sections, it can not concede the correctness of his contention, as disclosed by the State surveyor general, but entertains a contrary view, as indicated by its decisions hereinbefore cited. If Mr. Lake or other persons have vested rights in or to any such sections 16 or 36, H. R. 19344, if enacted, can not defeat the same, while the adoption of the amendment proposed might be construed as a recognition that valid claims do exist to such school sections heretofore presented and in some instances accepted, as a sufficient basis for school indemnity selections. The department is emphatically of the opinion that the proposed amendment should not be adopted.

The amendment proposed by Mr. Bolton is to the effect that the Secretary of the Interior "shall not approve any exchange of lands if the lands selected by the State be, at the time of approval, within the exterior limits of any land withdrawn under the provisions of an act entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910."

The State surveyor general and attorney general advise you that the State of California is opposed to this amendment on the ground that under it the State would waive the rights of persons who have purchased lieu-selection lands from the State. The attorney general states that—

"Bolton fears that bill introduced by you will injure rights of his clients who are claiming as mineral claimants. The State has selected certain lands for said applicants whose applications are on file in the State land office. They claim that as land was subject to selection their rights attach. If this is so, they should not be defeated by Bolton's amendment."

It appears from the records of this department that indemnity school selections were filed by the State of California upon unreserved public land in lieu of school sections within reservations, and that thereafter the lands covered by the indemnity school selections were, with adjoining tracts, withdrawn under the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), for classification in aid of legislation and for other public purposes, and that such State selections are now suspended and pending. In this connection it also appears from the records of this department that certain mineral claimants, for whom Mr. Bolton appears as counsel, are contending before this department that certain of the State selections in question should be rejected and canceled by the Secretary of the Interior because of the existing withdrawals, and the proposed amendment would seem designed to effect this end through legislation. H. R. 19344 does not direct or compel the Secretary of the Interior to approve these or other indemnity selections, but leaves him the same discretionary power that he now possesses in such cases.

Under section 2276, Revised Statutes, amended, lands selected in lieu of school sections surrendered under section 2275, Revised Statutes, are required to be "unappropriated surveyed public lands, not mineral in character." The uniform holding of the courts and repeated rulings of the department with reference to indemnity school selections and other selections requiring approval of the Secretary of the Interior are to the effect that no vested rights are secured through such selections until same have been duly approved by the Secretary of the Interior, all proceedings prior thereto amounting to but a tender of a selection.

It is thus apparent that full power and authority rest with the Secretary of the Interior under existing law, and will rest with him under H. R. 19344, if enacted, to adjudicate such selections and any claims arising in connection therewith, as well as to give due effect to any withdrawals made under the provisions of the act of June 25, 1910, supra.

The department further believes that the Secretary of the Interior should not be by act of Congress deprived of authority to approve such selections as to the lands covered thereby which are found to be nonmineral in character and otherwise subject to selection. Furthermore, selections made, but not approved, prior to the withdrawal of the selected lands under the act of June 25, 1910, are held subject to action under such withdrawal, and are not approved, certified, or patented during the existence of such withdrawal.

It is further noted that this amendment relates to lands "within the exterior limits of any land withdrawn," etc. This is specially objectionable, as a number of tracts within the exterior limits of a withdrawal may be excluded therefrom, and the amendment should therefore be limited at least to the lands withdrawn. Being of opinion, however, that no good reason exists for this amendment, I must recommend that it be not adopted.

I have examined the opinion of Judge Wellborn in the case of Hibberd *v.* Slack (84 Fed. Rep., 571), in which it was held that the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, does not contemplate an exchange of lands between a State and the United States, but only indemnity for loss to a State because of inclusion of school lands within a forest or other reservation prior to their identification by the Government survey, and I find that a contrary rule has prevailed in this department since January 30, 1899, ex parte State of California (28 L. D., 57); Dunn et al. *v.* California (30 L. D., 608); opinion of assistant attorney general, now Justice Van Devanter (29 L. D., 364); also 29 L. D., 399; opinion of Assistant Attorney General Campbell (34 L. D., 599); ex parte State of California (34 L. D., 613).

After a careful review of the several decisions bearing upon this subject, and especially in view of the fact that the act of February 28, 1891, was a general adjustment act, I see no reason to depart from the present holding of the department on this subject.

In accordance with your request, I will be pleased to have a representative of this department appear before the Committee on the Public Lands at 10 o'clock a. m. April 2, 1912.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

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